

(29,177)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 627.

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SVEN HAAVIK, APPELLANT,

vs.

ALASKA PACKERS ASSOCIATION.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF CALIFORNIA.

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1 UNITED STATES OF AMERICA:

District Court of the United States, Northern District of California.

Clerk's Office No. 17523.

SVEN HAAVIK, Libelant and Appellant,

vs.

ALASKA PACKERS ASSOCIATION, Defendant and Appellee.

*Præcipe (for Apostles on Appeal)*

To the Clerk of said Court:

SIR:

Please issue to the Clerk of the Supreme Court of the United States, a record on Libelant's and Appellant's Appeal, consisting of the following papers in said cause, to wit:

The Libel,

This Præcipe and admission of service thereon,

The Exceptions of the Defendant to the Libel,

The order sustaining the Exceptions to the Libel,

The Decree,

The Assignment of Errors,

The Petition for Appeal, and Order Allowing the Appeal,

Forward original Citation, and Admission of Service thereon.

Dated: August 24th, 1922.

Yours etc.,

H. W. HUTTON,  
*Proctor for Appellant.*

2 Copy of the foregoing Præcipe received this 24th day of August, 1922.

CHICKERING & GREGORY,  
*Proctors for Appellee.*

(Endorsed:) Filed Aug. 24, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

3 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

In Admiralty.

No. (17523.)

SVEN HAAVIK, Libelant,

vs.

ALASKA PACKERS ASSOCIATION, Defendant.

*(Libel for Seamen's Wages.)*

To the Honorable M. T. Dooling, Judge of the above entitled Court:

The libel of Sven Haavik of said District, against, Alaska Packers Association, also of said District, a shipowner, ship operator and salmon canner, in a cause of wages civil and maritime, alleges as follows:

I.

That on all of the dates and times herein mentioned, Alaska Packers Association, was and now is a corporation, organized and existing under and by virtue of the laws of the State of California, and on all of said dates and times, it had, and now has its office and principal place of business in the City and County of San Francisco, State of California.

II.

That for many years last past Libelant has been a resident of the State of California, and on all of the dates and times herein mentioned he was a citizen of the United States of America, married, and a resident of the City of Alameda, County of Alameda, State of California, and he has never resided in Alaska at any time.

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III.

That during the whole of the year, 1921, defendant was the owner and operator of a certain sailing vessel flying the flag of the United States of America, named the "Star of Finland."

IV.

That during the whole of the year, 1921, and for many years prior thereto, defendant was engaged in canning salmon in the Territory of Alaska, and in such canning of salmon it sent its vessels manned with seamen and fishermen from the Port of San Francisco, State of California, each year, and all the supplies used in canning

such salmon excepting only the salmon itself, to wit: cases in which to pack such canned salmon, tins in which to can it, labels to place on said tins, food for its men while working in catching and canning said salmon, and when such salmon was caught and canned, it would load the same upon its vessels and bring the same to San Francisco, in the State of California, and there sell and distribute the same to all parts of the world, none of the salmon so caught and canned by defendant being consumed in the Territory of Alaska, but on the contrary, defendant while so engaged in such business of canning salmon was engaged in interstate and foreign commerce.

#### V.

That on the 13th day of April, 1921, defendant hired and employed the libelant to serve as a seaman and fisherman upon its said vessel, "Star of Finland," said hiring taking place in the Port of San Francisco, State of California, and in pursuance of such hiring and employment, libelant signed shipping articles for such employment before the United States Shipping Commissioner for the said Port of San Francisco, the said shipping articles so signed by libelant being in the form provided by Table "A" of the Schedule 5 attached to Section 4511 of the Revised Statutes of the United States, the voyage mentioned in said shipping articles so signed by libelant being:

"From the Port of San Francisco, California, to Alitak, Alaska, and such other Alaskan ports as the master may direct and return to San Francisco for final discharge either direct or via one or more ports on the Pacific Coast and such other ports and places in any part of the world as the Master may direct and back to a final port of discharge in the United States for a term of time not exceeding nine calendar months."

#### VI.

That there was also an agreement in said shipping articles that libelant should work in loading and discharging all cargoes and ballast if required, and work on shore or in boats as the master of said vessel might direct or the agent of defendant might direct.

#### VII.

That there was a further agreement in said shipping articles, that libelant should give his whole time and energy to the business and interests of defendant and work night or day (Sundays and holidays not excepted) according to the lawful orders of the captain, superintendent or whoever might be in charge; and that he would labor in the capacity of Seaman, Fisherman, Beachman or Trapman, also, work on boats, lighters, vessels and in canneries or salting stations if required by defendant.

#### VIII.

That for compensation for his services, as aforesaid, defendant agreed to pay libelant the sum of one hundred and fifty (\$150.00)

dollars, and one and one-half (1½) cents for each case of canned salmon it should can and pack at the station at which libelant sailed to, the same being payable not less than seventy-five (\$75.00) 6 dollars to libelant's wife while libelant was on said voyage, to be paid in San Francisco aforesaid, and there was attached to said shipping articles which read as follows:

"All moneys earned to be payable in San Francisco after the return of the expedition, except the sum of Ten Dollars (\$10.00) which is to be paid on the homeward voyage to each man signing this agreement."

#### IX.

That pursuant to such hiring and employment and the shipping articles aforesaid libelant went on board and into the service of defendant on said vessel "Star of Finland" at said San Francisco and said vessel left said place and proceeded to said Alitak in the Territory of Alaska, Libelant working as a seaman on said vessel on said voyage from said San Francisco to said Alitak, and at said Alitak he assisted in discharging the cargo that said vessel had taken to said place for salmon canning purposes, and then in getting ready to catch and can salmon, and when the salmon began to run at said place so that salmon could be caught he went out in boats and caught salmon and when no more salmon could be caught, that which defendant had canned was by libellant and others loaded on board said "Star of Finland" and libelant thereupon went on board of said vessel and assisted in sailing said vessel back to said San Francisco, at which place all of the salmon so canned by defendant in Alaska during the year, 1921, was unloaded from said vessel and sold for consumption in all parts of the world.

#### X.

That said vessel "Star of Finland" returned to said San Francisco at the termination of said voyage on the 4th day of October, 1921, and the duration of her voyage from said San Francisco to Alitak aforesaid was about 28 days, and it took her about 11 days to 7 sail from said Alitak to said San Francisco, on her return voyage, and salmon was caught while said vessel was in Alaska for the period of about 40 days.

#### XI.

That libelant has never attended school in Alaska, nor were there any schools he could attend within several hundred miles of said Alitak, and the Alaska Salmon canning business commences each year by the departure of vessels from San Francisco, and other ports in Oregon and the State of Washington commencing with the month of April each year and ending usually with the month of September each year, and when not engaged in such business libelant works as a seaman each year on vessels sailing on the Pacific Coast of the United States, to wit on the coast of California, Oregon and Washington.

## XII.

That against the will, objections, and protest of libelant defendant when paying the libelant the wages he earned for his services while working for it as aforesaid during the year, 1921, deducted therefrom the sum of ten (\$10.00) dollars, which said defendant had paid the Territory of Alaska, as follows:

Five dollars (\$5.00) for a poll tax claimed by said Territory of Alaska from libelant under the provisions of Chapter 29, of the laws of Alaska, of the year 1919, said Chapter being found in the Session Laws of Alaska, for the year 1919, pages 74 to 84 inclusive, and the further sum of five (\$5.00) dollars, claimed by said Territory of Alaska from libelant under the provisions of Subdivision (h) of Section 12th, of Chapter 31 of the Laws of the Territory of Alaska, to be found on Page 99 of the Session Laws of Alaska for the year, 1921, under which the Territory of Alaska claimed from libelant as a non-resident fisherman the sum of five (\$5.00) dollars under its

8 said law which reads as follows:

"(h) Fishermen who are not residents of the Territory, five dollars (\$5.00) per annum. The term "fisherman" shall mean to include all persons employed on a boat engaged in fishing."

That the payment of said taxes by defendant was not binding upon the libelant for the following reasons among others, to-wit:

That it was without the jurisdiction of the Territory of Alaska to levy a poll-tax upon libelant as he was a non-resident of said Territory at the time of its attempted levy upon him.

Both said poll-tax and license tax imposed a burden on interstate and foreign commerce of the United States of America.

The deduction of the amount of each of said taxes from the wages of libelant in San Francisco, California, was without right as the laws of Alaska had no operation therein.

The payment of said poll-tax and license tax and the deduction thereof from the wages of libelant was the taking of property without due process of law.

The said license tax gave to fishermen residents of the Territory of Alaska a privilege, also, an immunity not given to the citizens of other states of the United States of America, and was, and is, in violation of the Organic Act of The Territory of Alaska, in that it gave to fishermen resident of the Territory of Alaska a special privilege and a special immunity and it, also, levied a special assessment upon non-resident fishermen.

That the Territory of Alaska had no power to levy a special license tax upon fishermen engaged in catching fish to be exported out of the Territory of Alaska.

## XIII.

That the payment of the wages of libelant that were paid to him by the defendant was made in the City and County of San Francisco, State of California.

## XIV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable Court.

Wherefore libelant prays that process in due form of law according to the course of this honorable Court in cases of admiralty and maritime jurisdiction may issue against the defendant, Alaska Packers' Association, and that it may therein be cited to appear and answer under oath all and singular the premises aforesaid and that this honorable Court will be pleased to decree the payment of the wages aforesaid, with interest and costs, and that libelant may have such other and further relief as in law and justice he may be entitled to receive.

SVEN HAAVIK,  
*Libelant.*

H. W. HUTTON,  
*Proctor for Libelant.*

10 UNITED STATES OF AMERICA,  
*Northern District of California, ss:*

Sven Haavik being first duly sworn deposes and says as follows: I am the libelant above named, I have read the foregoing libel and I know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated on information or belief, and as to those matters I believe it to be true.

SVEN HAAVIK.

Subscribed and sworn to before me this 24th day of April, 1922.

MATTIE G. STIRLING, [SEAL.]  
*Notary Public in and for the City and  
County of San Francisco, State of California.*

(Endorsed:) Filed Apr. 26, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

11 In the Southern Division of the United States District Court,  
Northern District of California, First Division.

(No. 17523.)

SVEN HAAVIK, Libelant,  
vs.  
ALASKA PACKERS ASSOCIATION, Defendant.  
*Exceptions to Libel.*

To the Honorable M. T. Dooling, Judge of the above-entitled Court:

The exception of Alaska Packers Association, defendant, to the libel and complaint of the above-named libelant herein, alleges as follows:

## I.

That the facts stated in said libel are not sufficient to constitute a cause of action or claim against this defendant.

## II.

That the facts stated in said libel show that the cause is directly controlled by the decision of this Court and of the United States Circuit Court of Appeals in and for the Ninth Circuit, in the action of Hedenskoy versus Alaska Packers Association, reported in 267 Federal Reporter, at page 154.

## III.

The libel is insufficient and indistinct on the following grounds:

12 (a) It does not appear therein whether or not the fishing license therein referred to was issued upon an application being made by libelant as required by the law of the Territory of Alaska.

(b) It does not appear therein, nor can it be determined therefrom, whether or not the performance of the services as a fisherman in Alaska, as alleged in said complaint, constitutes the main business and source of livelihood of libelant, or what proportion of the time of the libelant has been spent each year in such business as a fisherman in Alaska, nor does it appear for how many years libelant has been accustomed to go to Alaska to work as a fisherman as alleged in the libel.

(c) It does not appear therein whether or not libelant had authorized defendant to pay the Territory of Alaska the sums of money respectively claimed for the poll tax and also for the fishing license.

(d) It does not appear therein whether or not the employment as fisherman as alleged in said libel was an engagement in interstate or foreign commerce of the United States.

Wherefore, the defendant prays that the libel may be dismissed with costs.

CHICKERING & GREGORY,  
*Proctors for Defendant.*

(Endorsed.)

Due service of the within Exceptions and receipt of a copy is hereby admitted this 9th day of August, 1922.

Filed Aug. 10, 1922.

W. B. MALING,

*Clerk.*

By C. W. CALBREATH,

*Deputy Clerk.*

H. W. HUTTON,  
*Proctor for Libelant.*

13 At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the court-room thereof, in the city and county of San Francisco, on Saturday the 12th day of August, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable Frank H. Rudkin, Judge.

No. 17523.

SVEN HAAVIK, Libelant,  
vs.

ALASKA PACKERS ASSOCIATION, Respondent.

(*Order Sustaining Exceptions One and Two and Overruling Exception Three.*)

This cause came on regularly for hearing of exceptions to libel. After hearing H. W. Hutton, Esq., Proctor for Libelant, it was ordered that exceptions one and two be, and the same are hereby, sustained, and that exception three be, and the same is hereby, overruled.

14 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

In Admiralty.

(No. 17523.)

SVEN HAAVIK, Libelant,  
vs.

ALASKA PACKERS' ASSOCIATION, Defendant.

(*Final Decree.*)

Defendant's exceptions to libelant's libel having been submitted to the Court for decision, and the Court being fully advised, it is now ordered, adjudged and decreed, and this does order adjudge and decree, that the first and second of said exceptions be, and they each are, hereby sustained, and otherwise the remaining of said exceptions are overruled, and libelant declining to amend, libelant's libel is hereby dismissed, with costs to be taxed.

Dated: August 18, 1922.

FRANK H. RUDKIN,  
United States District Judge.

(Endorsed:) Filed Aug. 18, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

15 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

(No. 17523.)

SVEN HAAVIK, Libelant and Appellant,

vs.

ALASKA PACKERS' ASSOCIATION, Defendant and Appellee.

(*Petition for Appeal.*)

Sven Haavik, the Libelant and Appellant above named, considering himself aggrieved by the final decree made and entered in the above entitled cause on the 18th day of August, 1922, wherein and whereby his libel in the above entitled cause was dismissed, hereby appeals from the said decree and each and every part thereof to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith; and said Appellant prays that his petition for his said appeal be allowed, and that a transcript of the record, proceedings and papers upon which the decree was made may be sent to the said, the Supreme Court of the United States, there being none but constitutional questions involved in said appeal.

Dated: at San Francisco, California, this 23rd day of August, 1922.

H. W. HUTTON,  
*Proctor for Libelant and Appellant.*

16

(*Order Allowing Appeal.*)

Upon the foregoing petition of Sven Haavik, libelant and appellant above named, praying for the allowance of an appeal in the above entitled action to the Supreme Court of the United States, it appearing that said libelant and appellant has duly filed his assignment of errors as required by law and the rules of said Supreme Court of the United States, now therefore,

It is hereby ordered that the said appeal be, and the same is hereby allowed as prayed for.

And it further appearing that Libelant's claim is one for seamen's wages, and that under the Act of Congress of July 1st, 1918, 40 Statutes at Large, Page 683, no bond can be required of a seaman so suing, it is ordered that no bond be required of said Libelant and Appellant on said appeal.

Dated: August 24th, 1922.

WM. H. HUNT,  
*United States Circuit Judge.*

(Endorsed:) Filed Aug. 24, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

17 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

(No. 17523.)

SVEN HAAVIK, Libelant and Appellant,

vs.

ALASKA PACKERS' ASSOCIATION, Defendant and Appellee.

*Assignment of Errors.*

I.

The Court erred in sustaining defendant's first exception to Libelant's libel, for the following reasons:

(a) Libelant being a resident of and domiciled in the State of California, the Territory of Alaska had no power to tax him for any purpose.

(b) Libelant being temporarily in the Territory of Alaska for business purposes, the said Territory had no jurisdiction over him for taxation purposes.

(c) Libelant being a resident of and domiciled in the State of California, any taxation of him by the Territory of Alaska, was the taking of property without due process of law.

(d) The school, or poll tax, levied upon libelant by the Territory of Alaska imposed an unlawful burden on interstate and foreign commerce.

18 (e) The following law of the Territory of Alaska, to wit:

"(h) Fishermen who are not residents of the Territory, five dollars (5) per annum. The term 'fishermen' shall mean to include all persons employed on a boat engaged in fishing,"

is in conflict with Sub. 1 of Sec. 2, of Article IV of the Constitution of the United States.

(f) The said license tax imposed an unlawful burden on interstate and foreign commerce in the case of the libelant.

(g) The Territory of Alaska was without power to levy a tax of any character upon libelant a non-resident of the territory and but temporarily engaged in catching salmon to be exported out of that Territory.

(h) For the foregoing reasons, the payment by the defendant of the taxes complained of in the libel were not binding on the libelant.

(i) The deduction of the amount of the taxes paid by the defendant to the Territory of Alaska, from the wages of the Libelant paid in San Francisco, California, was the taking of property without due process of law, as the laws of Alaska had no operation in said San Francisco.

(j) The fishing license tax levied upon non-residents of the Territory of Alaska was a tax levied upon Libelant's property right to fish in Alaska in violation of Sec. 9 of the Organic Act of Alaska as it discriminated in favor of resident fishermen.

(k) The fishing license tax levied upon non-resident fishermen by the Territory of Alaska is a special law in violation of the Act of Congress prohibiting territories from passing local or special laws, approved July 30th, 1886.

(l) The fishing license tax levied upon non-resident fishermen by the Territory of Alaska, gives an exclusive privilege and 19 immunity to fishermen residents of Alaska, in violation of the Act of Congress, approved July 30th, 1886, prohibiting Territories of the United States from passing local or special laws.

## II.

The Court erred in sustaining defendant's second exception to libelant's libel, for the reason that the decision of the United States Circuit Court of Appeals, in and for the Ninth Circuit, in the case of *Hedenskoy v. Alaska Packers Association*, reported in 267 Federal Reporter at Page 154, is in conflict with the overwhelming weight of authority on the subjects decided therein.

## III.

The Court erred in dismissing Libelant's libel.

H. W. HUTTON,  
Proctor for Libelant and Appellant.

(Endorsed:) Filed Aug. 24, 1922. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

20 Certificate of Clerk U. S. District Court to Apostles on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 19 pages, numbered from 1 to 19, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of Sven Haavik, Libelant, vs. Alaska Packers Association, Respondent, No. 17523, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for apostles on appeal (copy of which is embodied herein), and the instructions of the Proctor for Libelant and Appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Six Dollars and Sixty Five Cents (\$6.65) and that the same has been paid to me by the Proctor for the Appellant herein.

Annexed hereto is the original citation on appeal, issued herein (page 21).

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 23rd day of September A. D. 1922.

[Seal of the U. S. District Court, Northern District, California.]

WALTER B. MALING,  
*Clerk,*

By C. M. TAYLOR,  
*Deputy Clerk.*

21 In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

In Admiralty.

SVEN HAAVIK, Libelant and Appellant,

vs.

ALASKA PACKERS ASSOCIATION, Defendant and Appellee.

UNITED STATES OF AMERICA,  
*Northern District of California, ss:*

The President of the United States of America to the defendant and appellee above named, Greeting:

You are hereby cited and admonished to be and appear before The Supreme Court of the United States, to be held at the City of Washington, District of Columbia, within sixty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the Southern Division of the District Court of the United States in and for the Northern District of California, in the above-entitled cause wherein Sven Haavik, is the libelant and appellant, and you are the defendant and appellee, to show cause, if any there be, why the decree entered in the above entitled cause on the 18th day of August, 1922, in said appeal mentioned, and thereby appealed from, should not be corrected and reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Hunt, United States Circuit Judge, for the Ninth Circuit, at the City and County of San Francisco, State of California, this 24th day of August, 1922.

WM. H. HUNT,  
*United States Circuit Judge.*

Service of a copy of the foregoing citation, and of the petition for appeal, order allowing appeal, and assignments of errors, 22 & 23 in the above-entitled cause, are hereby admitted this 24th day of August 1922.

CHICKERINGS & GREGORY,  
*Proctors for Defendant and Appellee.*

24 [Endorsed:] No. 17523. In the Southern Division of the United States District Court, Northern District of California, First Division in Admiralty. Sven Haavik, Libelant, vs. Alaska Packers Association, Defendant. Citation on Appeal. Filed Aug. 24, 1922. W. B. Maling, Clerk, by F. H. Baldwin, Deputy Clerk. G. W. Hutton, 527-529 Pacific Building, San Francisco, Cal., Proctor for Appellant.

25 In the Supreme Court of the United States.

In Admiralty.

SVEN HAAVIK, Appellant,

vs.

ALASKA PACKERS ASSOCIATION, Appellee.

The appellant in the above cause designates the following parts of the record to be printed, as necessary to a proper determination of said cause on appeal in conformity with Sub. 6 of Rule 8 of the above honorable Court, to wit;

1. The libel,
2. The exceptions to the libel,
3. The order sustaining the exceptions to the libel,
4. The decree,
5. The assignments of error.
6. Such other parts of the transmitted record as the Clerk of the Supreme Court of the United States may in his judgment print.

G. W. HUTTON,  
*Proctor for Appellant.*

Copy of the foregoing received, this 25th day of September, 1922.

CHICKERING & GREGORY,  
*Proctors for Appellee.*

Merchants Exchange Building, San Francisco, California.

26 [Endorsed:] No. —. In the Supreme Court of the United States. In Admiralty. Sven Haavik, Appellant, vs. Alaska Packers Association, Appellee. Designation of parts of record to be printed. H. W. Hutton, 527-529 Pacific Building, San Francisco, Cal., Proctor for Appellee.

27 [Endorsed:] File No. 29177. Supreme Court U. S. October Term, 1922. Term No. 627. Sven Haavik, Appellant, vs. Alaska Packers Association. Designation by appellant of parts of record to be printed. Filed Oct. 2, 1922.

Endorsed on cover: File No. 29177. N. California D. C. U. S. Term No. 627. Sven Haavik, Appellant, vs. Alaska Packers Association. Filed September 28th, 1922. File No. 29177.

(7667)